

D. The Criminal Proceeding Against Dixon.

152. The MPD was aware at least as of April 3, 2019 that the OPIA was reviewing all use of force incidents involving Dixon, following the publication of NJ.com's series entitled The Force Report, which was published in or about November or December of 2018.

153. Plaintiff Capps filed her original Complaint on May 1, 2019, and served Defendants at the City Clerk's Office on May 8, 2019.

154. Shortly thereafter, on May 10, 2019, Defendant Chief Farabella wrote to Dixon in a memorandum that "effective immediately" he was assigned to administrative/desk duties until further notice. Under this directive, Dixon would have no contact with the public other than answering phone calls.

155. By letter dated September 5, 2019, the OPIA notified Dixon that he was the target of a State Grand Jury investigation into allegations of official misconduct, assault and falsifying or tampering with public records relating to his conduct occurring during the course of his employment as a Millville police officer.

156. OPIA's investigation revealed, in fact, that Dixon prepared eighty (80) Use of Force reports during his time as a Millville police officer.

157. On November 20, 2019, Dixon entered guilty pleas on a pre-indictment Accusation in Superior Court, Cumberland County, to two counts of third-degree aggravated assault based on the conduct committed against Joyce on March 24, 2018 and against Plaintiff Capps one month earlier on February 25, 2018.

158. At his plea hearing on November 20, 2019, Dixon admitted under oath, among other things, that he used excessive force against Joyce and Capps, and that his actions were reckless.

159. As part of his guilty pleas, Dixon agreed to a lifetime ban on public employment, and he will never be able to serve as a police officer in the State of New Jersey ever again.

160. Dixon's pleas of guilty for his assaultive conduct as to Joyce and Capps came with a recommended and negotiated sentence of probation, conditioned upon serving 364 days in the Cumberland County Jail.

161. Following Dixon's guilty plea on November 20, 2019, New Jersey's Attorney General announced that, "When officers use force that has no reasonable relationship to any resistance or threat they face, as Dixon did, they not only injure and traumatize those involved, they do a tremendous disservice to all of their fellow officers who uphold the highest law enforcement standards and work hard to secure the trust of the communities they serve."

162. Following Dixon's guilty plea, OPIA Director Thomas Eicher further announced: "Nobody is above the law, and if we have sufficient proof that an officer has committed a crime, we will prosecute that officer as we would any other individual. This former officer will rightly carry a felony record for the rest of his life."

163. At sentencing on January 17, 2020, the Superior Court enforced the negotiated plea agreement entered by Dixon and the OPIA, placed Dixon on two years of probation, but the Court suspended Dixon's county jail sentence.

WHEREFORE, Plaintiff Audra S. Capps respectfully requests that this Honorable Court enter judgment in her favor and against Defendants Joseph Dixon, Bryan Orndorf, and John/Jane Doe(s) I and III, individually, jointly and severally, in an amount that would reasonably and properly compensate her in accordance with the law, together with punitive damages, prejudgment interest, costs of suit, reasonable attorney's fees pursuant to 42 U.S.C. section 1988, and such other relief as the Court deems just.

SECOND COUNT
Supervisory Liability Under 42 U.S.C. sec. 1983

"... I want to thank you for always having my back and being a great Chief."
(October 19, 2019 Resignation Email From Joseph Dixon to Chief Jody Farabella)

164. Plaintiffs incorporate the preceding paragraphs of this Amended Complaint as if set forth at length herein, and further apply and incorporate the allegations contained in this Second Count into the Third Count set forth herein.

**A. Acquiescence on Dixon's Repeated Uses of Force,
Failing to See the Warning Signs, and an
Ineffective Random MVR Review System.**

165. In the early days of Dixon's employment with the Millville Police Department, his employer and/or his supervisors suspended him for three days in October 2013 and required him to attend re-training on vehicular pursuit because he attempted a maneuver in violation of New Jersey Attorney General and MPD pursuit policies. At various other times, Dixon received discipline or counseling for, among other things, not properly submitting evidence and for missing court proceedings. But when it came to incidents involving the use of excessive force as they were occurring, and as Dixon was filling out his 80 UOF forms along the way, Defendant Chief Farabella and the other individual Supervisory Defendants had his back, and failed to act in the face of mounting documentary and video evidence that Dixon was a problem waiting to happen.

166. Moreover, upon information and belief, the Supervisory Defendants named herein either failed to notice or looked the other way when, as NJ.com reported in connection with The Force Report in late 2018, Dixon posted thoughts and memes to his public Facebook account to defend how other police officers use force, and to disparage critics of police tactics.

167. Upon information and belief, and as further reported by NJ.com, approximately three weeks after NJ.com reached out to Dixon about his posts, the privacy settings on Dixon's Facebook account changed, and the posts are no longer visible.

168. Upon further information and belief, and as reported by NJ.com, Dixon in 2016 posted a video of a peaceful Florida arrest and wrote: "You don't get shot or 'assaulted' when you shut your mouth and use your ears and comply."

169. Guardian Tracking System entries for Dixon prior to the Capps and Joyce incidents showed that he received discipline or counseling for non-force related infractions.

170. By August 27, 2014, after only being employed by the MPD for two years, Dixon accumulated 13 use of force incidents. On only one of those 13 cases did Defendant Lt. Colon have concerns, and as of that August 27, 2014 entry, Dixon would be "monitored for any further incidents." As discussed elsewhere herein, whatever "monitoring" was contemplated, it was plainly insufficient.

171. As part of the MPD's process of evaluating its officers, a supervisor would perform an evaluation on approximately an annual basis.

172. The City of Millville's own documents on the selection of MVR footage involving Dixon for purposes of evaluation and training revealed that supervisors did not review use of force incidents. Rather, supervisors' reviews of MVRs involving Dixon were selected at "random" and were not "incident specific," even though there was a box right on the evaluation template form which contemplated the ability to review specific incidents.

173. Upon information and belief, the practice of reviewing "random" incidents for training and evaluation purposes was not designed to catch those officers who might be using excessive force too frequently. Instead, the practice of "random" MVR reviews for evaluation purposes proved to be a means of studiously avoiding the actual review of use of force incidents, something that might expose a municipality to liability.

174. Defendant Sgt. Carl Heger provided an evaluation from November 1, 2017 through October 7, 2018, the period covering the Capps and Joyce incidents. Heger's evaluation forms make note of Dixon's traffic stops, pedestrian stops, summonses, but not incidents involving the use of force.

175. Supervisory reviews of Defendant Officer Orndorff during the Capps and Joyce incidents also revealed the use of only "random" MVA stops and no use of force incidents.

176. Defendant Sgt. Redden prepared an evaluation of Dixon from November 1, 2017 through November 1, 2017. He noted the number of traffic summonses, but no numbers for excessive force incidents. Quite strikingly, the report provided by Defendant Sgt. Redden covered the time period encompassing the jaywalking assault captured on video and published by a Philadelphia newspaper. Nevertheless, Sgt. Redden provided a positive evaluation for Dixon, despite the fact that he had limited interaction with him on his current unit.

177. Defendant Sgt. Cindi Zadroga evaluated Dixon for the period from March 1, 2016 through October 1, 2016. While describing some of Dixon's "unacceptable" ratings in completing tasks in a timely manner and in completing tasks, Sgt. Zadroga noted that Dixon's numbers on arrests, pedestrian stops, motor vehicle summonses, and use of force incidents including nine use of force incidents.

178. Defendant Dixon's supervisors who are listed as reviewed his performance from March 23, 2013 to the times of the Capps and Joyce incidents in chronological order are: Lt. Colon, Sgt. Mulford, Sgt. Hoffman, Chief Farabella, Sgt. D. McLaughlin, Sgt. Zadroga, Sgt. Redden, Lt. Heger, and Sgt. Ayars (ag-

as the "Supervisory Defendants"). Some of the UOF forms do not list a reviewing supervisor, and one even lists Dixon in the supervisory block on a UOF form.

179. City of Millville records also show that in 2014, some of Dixon's own supervisors, Defendants Lt. Zadroga, Sgt. Redden and Sgt. Duffield, themselves had sustained findings and received various punishments against them under the category of "failure to supervise."

180. None of the Supervisory Defendants, upon information and belief, took any steps to discipline or to remove Dixon from employment as a Millville police officer as a result of his use of force.

B. Lieutenant McLaughlin's OPIA Interview.

181. Defendant Lt. McLaughlin told OPIA's investigators in the 2019 Dixon criminal probe that it was the responsibility of the patrol sergeant to review all UOF forms and investigation reports.

182. But he described in his July 2019 OPIA interview that recently that year there was a change to the August 2016 updated Use of Force policy to review UOF reports.

183. Under the new 2019 policy, Defendant Lt. McLaughlin said, every UOF report must have a two-tier comprehensive review done by both the sergeant and the lieutenant. This review includes reviewing not only an investigation report but also any MVR and 9-1-1 recordings in reference to a call. The review is then added to what is known as the Guardian Tracking System by the sergeant and the lieutenant. However, prior to this 2019 policy change, the sergeant would only check the UOF form for accuracy and completeness, but the sergeant did not do any audio or video review.

184. The prior policy outlined by Defendant Lt. McLaughlin could not, as described, be meaningful or geared toward catching officers like Dixon engaging in the improper use of force.

That is because a standard UOF report is a one-page template that is filled in by the officer involved in a particular incident. Since a supervisor reviewing such a document more likely than not would not be expected to be out at the scene of the incident, and would not have firsthand knowledge of the incident, a supervisor would have no way of actually knowing that a UOF form was accurate and complete just by looking at the document prepared by the submitting officer.

185. When OPIA asked Defendant Lt. McLaughlin why the review policy changed in 2019, he told OPIA he was not sure, but that he believed it was because of OPIA's investigation and the release of The Force Report. This demonstrates that the MPD only changed its policy in favor of additional supervisory audio and video review of a use of force incident when it was exposed in public by the media and when one of its own officers was the subject of a criminal investigation.

186. Defendant Lt. McLaughlin also told OPIA about an additional use of force incident occurring on May 2, 2019, when Dixon was still on the police force, and which McLaughlin described in a May 20, 2019 letter. McLaughlin told OPIA that after his review of the 9-1-1 tape, Dixon should have been aware that he was responding to a mentally disturbed individual, and that he should not have used a closed fist strike to gain compliance. He said OC spray should have been used in that instance.

187. Defendant Lt. McLaughlin claimed in his OPIA interview that he did not pay attention to the news, but he was aware of The Force Report and possibly recalled looking at the numbers for his officers. He claimed that he did not read any of the articles.

188. Defendant Lt. McLaughlin told OPIA that he has not worked with Dixon and did not believe he has ever directly supervised him. In fact, however, Defendant Lt. McLaughlin did review three of Dixon's UOF reports.

189. Upon information and belief, Defendant L.t. McLaughlin took no steps to discipline Dixon for his use of force or to remove him from employment with the Millville Police Department.

**C. Sgt. Redden's OPIA Interview and Dixon's
"Glass Hands" and Reputation for Punching People.**

190. Defendant Sgt. John Redden, in his interview in July of 2019, likewise told OPIA that, approximately six months prior, the Millville Police Department's Use of Force policy changed. Before the change, it was his responsibility to check for completeness and compare a UOF report to the investigation report. Defendant Sgt. Redden thus described the 2019 policy change in somewhat different terms from the description provided by Defendant L.t. McLaughlin.

191. Nevertheless, Defendant Sgt. Redden said that under the new 2019 policy, if there was any complaint of pain, there must be a full investigation done of the incident, including review of MVR footage, including speaking to the injured individual and responding to the scene. After the completion of this investigation, the results must be entered into the Guardian Tracking System, stating if the use of force was justified or not.

192. Defendant Sgt. Redden told OPIA that he supervised Dixon for a few months prior to Dixon's involvement in an unrelated police-involved shooting, and at another occasion during Dixon's career. Redden told OPIA that Dixon left Redden's squad to go to another squad to work with a friend. It can be assumed that this friend was Defendant Officer Orndorf, who apparently knew Dixon for 11-12 years before Orndorf joined the MPD.

193. Defendant Sgt. Redden described Dixon as wanting to be proactive and aggressive, and noted that because of this Dixon caused more work for him and for other supervisors.

194. Remarkably, Defendant Sgt. Redden told OPIA that Dixon punches people in the face, and that he addressed his actions. In fact, Sgt. Redden referred to Dixon with the nickname of “glass hands,” because Dixon broke his hand on numerous occasions.

195. Defendant Sgt. Redden also related to OPIA that he told Dixon that the use of force gives the public a poor perception of the police.

196. According to Defendant Sgt. Redden, Dixon’s response to this was, “If I’m justified to use force, I’m going to use force.” Dixon’s attitude about the use of force stands in contrast to the Attorney General’s Use of Force Policy, which states that an officer should use the “utmost restraint” in connection with the use of force, even though it may be “justified.”

197. Importantly, Defendant Sgt. Redden was Dixon’s supervisor on the night of the Capps incident. (He is also listed as the supervisory officer on the UOF form for the Joyce incident on March 24, 2018.) In his OPIA interview, Defendant Sgt. Redden stated that he was under the impression that the Capps arrest was a normal DWI but nothing out of the ordinary. Defendant Sgt. Redden claimed that he watched the MVR – without specifying when he reviewed it – and claimed that Dixon just reacted to Capps. He told OPIA quite remarkably that he was glad that Dixon did not punch Capps because Dixon is known for punching people. Despite the fact that Redden knew Dixon was known for punching people, and gave Dixon the nickname of “glass hands,” Dixon remained on the police force.

D. Chief Farabella’s OPIA Interview and “Always Having” Dixon’s Back.

198. The OPIA also interviewed Defendant Chief Farabella in September 2019 as part of its criminal probe into Dixon’s conduct. Farabella told OPIA that the recent Use of Force policy change occurred as a result of the “ACLU or Star Ledger” report that came out and also from talking to other area chiefs of police.

199. Defendant Chief Farabella said that under the new policy, a UOF form would go from the sergeant to the lieutenant for review, after which it would not be seen by him unless an internal affairs investigation is generated. Furthermore, under the new policy, on all use of force incidents, an MVR review must be done. Supervisors are told to inform Internal Affairs if any excessive use of force is observed.

200. Defendant Chief Farabella did not issue his memorandum regarding the new use of force policy change until March 15, 2019. A new General Order on the Use of Force became effective on June 4, 2019. This was, unfortunately, too little too late to prevent what happened to Barry Cottman, Audra Capps and Tanika Joyce.

201. Defendant Chief Farabella told OPIA that when the use of force article came out meaning The Force Report (in late 2018) he observed that Officer Dixon had the most use of force in the state.

202. Defendant Chief Farabella also told OPIA in September 2019 that when the Capps arrest video was released to the public, he had concerns with Dixon using excessive force. He did not feel that Dixon's "hip throw" would have been the force he would have used in the same scenario.

203. Following Dixon's participation in an officer-involved shooting in April 2018, a captain at the time said that Defendant Chief Farabella should write a letter of valor for Dixon's actions. Defendant Chief Farabella confirmed to OPIA that he wrote this letter and that if Dixon were selected, he would have an opportunity to meet the President of the United States.

204. Even when The Force Report came out, and Dixon knew he was the highest ranking officer, Dixon was still using force, according to Defendant Chief Farabella's interview with OPIA. Defendant Chief Farabella further stated that, since becoming aware of Dixon's use of